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BAR MALAYSIA v. INDEX CONTINENT SDN BHD

FEDERAL COURT, PUTRAJAYA
MD RAUS SHARIF PCA
ABDULL HAMID EMBONG FCJ
SURIYADI HALIM OMAR FCJ
B HASAN LAH FCJ
RAMLY ALI FCJ
[CIVIL APPEAL NO: 02(F)-77-12-2013(W)]
30 DECEMBER 2015

C ***LEGAL PROFESSION:*** *Malaysian Bar – Object and powers of Bar Council – Company provided service of connecting general public to firms for legal assistance – Whether company's acts contravened provisions of Legal Profession Act 1976 – Whether infringement of s. 37 of Legal Profession Act 1976 within sole purview of Attorney General – Whether Bar Council had locus standi to commence action and*
D *apply for injunction – Legal Profession Act 1976, ss. 41, 42 & 57 – Federal Constitution, art. 145(3)*

CIVIL PROCEDURE: *Injunction – Locus standi – Private limited company – Infringement of s. 37 of Legal Profession Act 1976 ('LPA') – Whether Bar Council had locus standi to commence action and apply for injunction – Whether within*
E *sole purview of Attorney General – Powers of Bar Council – Whether conferred by ss. 41 & 42 to protect and assist public on matters ancillary or incidental to law – Whether Bar Council empowered to bring civil action against parties acting in contravention of LPA – Federal Constitution, art. 145(3)*

F ***STATUTORY INTERPRETATION:*** *Construction – Power given by Act – Legal Profession Act 1976 ('LPA') – Interpretation of – Whether ss. 37, 41, 42 & 57 should be given purposive interpretation – Whether there was failure to appreciate extent of objectives and purpose of LPA and Bar Council's roles and functions – Whether Bar Council empowered to bring civil action against parties acting in contravention of LPA*

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The appellant was a body corporate established by the Legal Profession Act 1976 ('the LPA'). The respondent, a private limited company, wished to launch a service to members of the public who are seeking legal assistance by providing information on law firms providing such assistance, and connecting the requesting party to the appropriate law firms. The appellant
H contended that the activities of the respondent were in breach of the LPA as they were purporting to, *inter alia*, carry out their business and advertise the impugned services that are normally and customarily carried out or undertaken by an advocate and solicitor of the High Court of Malaya. The appellant sought and obtained from the High Court an interlocutory and *quia*
I *timet* injunction against the respondent on the ground that it had a duty to protect public interest. The High Court Judge found that the appellant had substantive *locus standi* as the LPA had provided for the appellant, in s. 42,

extensive objects and powers to commence the action and apply for the injunction. Aggrieved with the decision of the High Court, the respondent appealed to the Court of Appeal. The Court of Appeal, in allowing the respondent's appeal, held the view that the powers of the appellant in ss. 41(2) and 42(2) must be read together with the powers in s. 57 of the LPA. In doing so, it was apparent that the powers of the appellant to institute legal proceedings through the Bar Council, were limited to matters concerning the affairs of the Malaysian Bar. According to the Court of Appeal, as any infringement of s. 37 of the LPA was penal in nature, such infringement was within the sole purview of the Attorney General as the Public Prosecutor, and thus was not part of the affairs of the appellant. Therefore, in the instant case, the Court of Appeal found that the appellant did not have the substantive *locus standi* to apply for the injunction. Thus, the appellant appealed against the said decision. The issue that arose herein was whether the appellant had the *locus standi* to commence the action against the respondent pursuant to ss. 41(2) and 42(2) of the LPA for any infringement of s. 37 of the LPA.

Held (allowing appeal)
Per Md Raus Sharif PCA delivering the judgment of the court:

(1) The appellant is conferred by the LPA with powers to sue and 'to protect and assist the public in all matters touching ancillary or incidental to the law' as provided under s. 42(1)(g) of the LPA. The underlying purpose in s. 42(1)(g) of the LPA was to clothe the appellant with *locus standi* to bring this action for 'the benefit and protection of an unsuspecting public.' When an unauthorised person purports to act or to do all things customarily done by an advocate and solicitor, which would be in violation of s. 37 of the LPA, the appellant was clothed with powers under s. 42(2) of the LPA to sue. The Court of Appeal erred when it held the view that the appellant did not have the substantive *locus standi* to apply for the injunction. (paras 26-29)

(2) Notwithstanding the penal nature of s. 37, the Court of Appeal had erred in concluding that the infringement under s. 37 of the LPA was within the sole purview of the Attorney General as the Public Prosecutor and was not part of the affairs of the appellant. The appellant's power to 'sue' for a violation of s. 37 of the LPA was neither an 'usurpation' nor was it inconsistent with the Attorney General's powers under art. 145(3) of the Federal Constitution. The powers of the Bar in particular under ss. 42(1)(e), (g) and 42(2)(e) of the LPA must be read to be co-extensive with the powers of the Attorney General under art.145(3) of the Federal Constitution. Thus, the appellant had the requisite *locus standi* to sue the respondent for the alleged breach under s. 37 of the LPA. (para 30 & 37)

(3) The Court of Appeal, in giving ss. 37, 41, 42 and 57 of the LPA a narrow and restricted interpretation, had failed to appreciate the extent of the objective and purpose of the LPA and the roles and functions of the appellant in the context of the wider interest of the legal profession and the public at large. A purposive interpretation that promotes the purpose behind the enactment of the aforesaid provisions must be accorded; otherwise it would create an absurd situation which would defeat the appellant's statutory purpose to protect the public including the members of the Bar from violations of the LPA. The appellant, as the governing body for the legal profession, is empowered to bring civil action to seek legal redress, including injunctive relief against parties who act in contravention of the LPA. (paras 38 & 39)

Bahasa Malaysia *Headnotes*

Perayu adalah badan korporat yang ditubuhkan di bawah Akta Profesion Undang-Undang 1976 ('APU'). Responden, sebuah syarikat sendirian berhad, berhasrat untuk melancarkan perkhidmatan kepada masyarakat awam yang ingin mendapatkan bantuan guaman dengan membekalkan maklumat berkenaan firma-firma guaman yang menyediakan bantuan sedemikian dan menghubungkan pihak terbabit dengan firma-firma guaman yang sesuai. Perayu menghujahkan bahawa aktiviti-aktiviti responden melanggar APU kerana mereka dikatakan telah, antara lain, menjalankan perniagaan mereka dan mengiklankan perkhidmatan yang biasanya dan lazimnya dijalankan atau dilakukan oleh peguambela dan peguamcara Mahkamah Tinggi Malaya. Perayu memohon dan berjaya mendapatkan injunksi interlokutori dan *quia timet* daripada Mahkamah Tinggi terhadap responden atas alasan bahawa ia bertanggungjawab melindungi kepentingan awam. Hakim Mahkamah Tinggi mendapati bahawa perayu mempunyai *locus standi* substantif kerana di bawah s. 42, APU memperuntukkan perayu dengan objek-objek dan kuasa-kuasa menyeluruh untuk memulakan tindakan dan memohon injunksi. Terkilan dengan keputusan Mahkamah Tinggi, responden merayu kepada Mahkamah Rayuan. Mahkamah Rayuan, dalam membenarkan rayuan responden berpendapat bahawa kuasa-kuasa perayu dalam ss. 41(2) dan 42(2) APU hendaklah dibaca bersama-sama dengan kuasa dalam s. 57 APU. Dengan berbuat demikian, jelas bahawa kuasa-kuasa perayu untuk memulakan prosiding guaman melalui Majlis Peguam terhad kepada perkara-perkara berkaitan urusan Bar Malaysia sahaja. Menurut Mahkamah Rayuan, apa-apa pelanggaran s. 37 APU bersifat jenayah dan pelanggaran sebegitu terangkum dalam tugas khusus Peguam Negara sebagai Pendakwa Raya, dan bukannya sebahagian daripada urusan perayu. Oleh itu, dalam kes ini Mahkamah Rayuan mendapati bahawa perayu tidak mempunyai *locus standi* substantif untuk memohon injunksi tersebut. Perayu merayu terhadap keputusan tersebut. Isu yang berbangkit adalah sama ada perayu mempunyai *locus standi* memulakan tindakan terhadap responden menurut ss. 41(2) dan 42(2) APU bagi apa-apa pelanggaran s. 37 APU.

Diputuskan (membenarkan rayuan)
Oleh Md Raus Sharif PMR menyampaikan keputusan mahkamah:

(1) Perayu diperuntukkan oleh APU dengan kuasa-kuasa untuk menyaman dan memperlindungi dan menolong orang ramai dalam semua perkara yang menyentuh, berkaitan atau bersampingan dengan undang-undang sebagaimana yang diperuntukkan di bawah s. 42(1)(g) APU. Tujuan asas s. 42(1)(g) APU adalah untuk memberi *locus standi* kepada perayu bagi membawa tindakan bagi manfaat dan perlindungan awam. Apabila seseorang yang tidak diberikan kuasa bertindak melakukan atau membuat perkara yang lazimnya dilakukan oleh peguambela dan peguamcara yang sekaligus melanggar s. 37 APU, perayu diberi kuasa di bawah s. 42(2) APU untuk menyaman. Mahkamah Rayuan terkhilaf apabila memutuskan bahawa perayu tidak mempunyai *locus standi* substantif untuk memohon injunksi tersebut.

(2) Walaupun s. 37 bersifat menghukum, Mahkamah Rayuan terkhilaf dalam menyimpulkan bahawa pelanggaran s. 37 APU termaktub di bawah tugas khusus Peguam Negara sebagai Pendakwa Raya dan bukanlah sebahagian daripada urusan perayu. Kuasa perayu untuk menyaman bagi pelanggaran s. 37 APU bukan satu rampasan tugas atau tidak konsisten dengan kuasa-kuasa Peguam Negara di bawah per. 145(3) Perlembagaan Persekutuan. Kuasa-kuasa Majlis Peguam khususnya di bawah ss. 42(1)(e), (g) dan 42(2)(e) APU harus dibaca setara dengan kuasa-kuasa Peguam Negara di bawah per. 145(3) Perlembagaan Persekutuan. Maka, perayu mempunyai *locus standi* untuk menyaman responden bagi pelanggaran yang dipersoalkan di bawah s. 37 APU.

(3) Mahkamah Rayuan dalam memberi ss. 37, 41, 42 dan 57 APU tafsiran sempit dan terbatas, gagal menyimpulkan sejauh mana objektif dan tujuan APU dan peranan serta fungsi perayu dalam konteks kepentingan luas profesion guaman dan masyarakat awam. Satu tafsiran purposif bertujuan mempromosi peruntukan-peruntukan Enakmen yang dikatakan mesti diberikan; jika tidak ia akan mewujudkan situasi mustahil yang akan melumpuhkan tujuan statutori perayu untuk melindungi masyarakat awam termasuk ahli-ahli Majlis Peguam daripada pelanggaran APU. Perayu sebagai badan pentadbir profesion guaman diberi kuasa membawa tindakan sivil bagi mendapatkan penyelesaian undang-undang termasuk relif injunksi terhadap pihak-pihak yang bertindak melanggar APU.

Case(s) referred to:
American Cyanamid Co v. Ethicon Ltd [1975] AC 396 ***(refd)***
Fadzil Mohamed Noor v. Universiti Teknologi Malaysia [1981] 1 LNS 214 FC ***(refd)***
Gouriet v. Union of Post Office Workers & Ors [1977] 3 All ER 70 ***(refd)***
Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

A *Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & Ors [1995] 1 CLJ 293 CA* ***(refd)***
Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors And Other Appeals [1997] 4 CLJ 253 CA ***(refd)***
Lembaga Minyak Sawit Malaysia v. Arunamari Plantations Sdn Bhd & Ors And Another Appeal [2015] 7 CLJ 149 FC ***(refd)***
B *Luke v. IRC [1963] AC 557* ***(refd)***
Majlis Peguam Malaysia & Ors v. Raja Sekaran Krishnan & Other Appeals [2004] 4 CLJ 239 CA ***(refd)***
Malaysian Shipyard & Engineering Sdn Bhd v. Bank Kerjasama Rakyat (M) Bhd [1985] 2 CLJ 427; [1985] CLJ (Rep) 206 SC ***(refd)***
C *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC* ***(refd)***
Public Textiles Bhd v. Lembaga Letrik Negara [1976] 1 LNS 120 FC ***(refd)***
WT Ramsay Ltd v. Inland Revenue Commission [1982] AC 300 ***(refd)***

Legislation referred to:
Federal Constitution, art. 145(3)
D Interpretation Acts 1948 and 1967, s. 17A
Legal Profession Act 1976, ss. 36, 37(3), 41(2), 42(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (2)(e), 57

For the appellant - Robert Lazar (Aarthi Jeyarajah with him); M/s Trevor George Partnership
E *For the respondent - Mahathir Abdullah (S Thilaga with him); M/s S Thilaga*

[Editor's note: For the Court of Appeal judgment, please see Index Continent Sdn Bhd v. Bar Malaysia [2013] 9 CLJ 433 (overruled)]

Reported by Suhainah Wahiduddin

F

JUDGMENT

Md Raus Sharif PCA:

Introduction

G **[1]** On 20 November 2014, we unanimously allowed the appeal by Bar Malaysia (the appellant) against the decision of the Court of Appeal in allowing Index Continental Sdn Bhd's (the respondent) appeal against the decision of the High Court in granting an interlocutory injunction in favour of the appellant.

H **[2]** We set aside the decision of the Court of Appeal and remitted the case to the High Court for trial. We now give our reasons.

Leave Questions

[3] Leave to appeal was granted by this court on 18 November 2013 to
I the appellant on the following questions of law, namely:

(a) whether, as a matter of statutory construction of ss. 41 and 42 of the LPA 1976 (and of the LPA 1976 as a whole), s. 42(2)(e) of the LPA 1976 confers upon the applicant the power to do all such things "incidental or conducive" to the achievement/betterment of its statutory purposes, as set out in s. 42(1)(a) to (n) of the LPA 1976;

(b) whether, as a matter of statutory construction, as the powers conferred on the applicant by s. 42(2) of the LPA 1976 are specifically stated to be "in addition to any other powers given by this Act", these powers are in addition to (and not restricted, curtailed or subject to) the specific powers conferred by s. 57 LPA of the 1976;

(c) following from the questions above, whether the appellant is therefore conferred with power to do all things "incidental or conducive" to protect and assist the public in all matters touching ancillary or incidental to the law (as provided by s. 42(1)(g) of the LPA 1976), which includes instituting legal proceedings for breach(es) of the LPA 1976 (in particular ss. 36 and 37);

(d) whether, for purposes of achievement or betterment of its objects under the LPA 1976 (in particular s. 42(1)(g)), the powers conferred on the appellant to institute legal proceedings for breach(es) of the LPA 1976 are co-extensive (and not mutually exclusive) with the power to institute criminal prosecution(s) conferred on the Attorney-General under art. 145 of the Federal Constitution; and

(e) whether in law, and in particular under the LPA 1976, the Malaysian Bar, as the governing body for the legal profession in West Malaysia, is empowered to bring civil action to seek legal redress, including injunctive relief against parties who act in contravention of the LPA 1976.

Background Facts

[4] The factual matrix against which this appeal rests is not in dispute. The appellant is a body corporate established by the Legal Profession Act 1976 ("the LPA").

[5] The respondent is a private limited company incorporated under the Companies Act 1965.

[6] The respondent wishes to launch a service to members of the public who are seeking legal assistance by providing information on law firms providing such assistance, and connecting the requesting party to the appropriate law firms ("the impugned services").

[7] To that end, the respondent had been approaching several legal firms to inquire about their services and the terms of their services. The respondent had also advertised the impugned services on the internet and by e-mail, but had made it clear that it does not itself provide any legal service.

[8] The appellant then applied *vide* a writ of summons and statement of claim, for various declaratory reliefs and injunction against the respondent in connection with the latter's activities in promoting its prepaid legal services on a subscription basis by the name of "answers-in-law".

[9] On 29 November 2011, the High Court had granted an *ad interim* injunction in respect of prayers (i), (ii) and (iii) of the appellant's summons in chambers (encl. 4) to restrain the respondent from continuing to advertise, promote or otherwise communicate howsoever its purported provision of prepaid legal services ("the impugned services"), from carrying and/or engaging in the provision of the impugned services to members of the public and from directly or indirectly soliciting clients, members or subscribers for its answers-in-law scheme in breach of s. 37 of the LPA.

[10] The appellant verily believed that if the respondent, its agents, servants and/or employees are not restrained, they would continue with their actions and the breach of the LPA would go unchecked. The appellant would thus be failing in its statutory duty if it did not file the present action or take such steps as necessary to restrain the respondent from advertising, representing, and/or continuing to provide the impugned services to the general public and from communicating with members of the legal profession about the impugned services. And, if an injunction is not granted, there is a real likelihood of serious and dire consequences especially to the gullible and unsuspecting public in general.

[11] The appellant contended that the activities of the respondent were in breach of the LPA wherein the respondent, its agents, servants or employees, being not "authorised persons" have acted and are still acting in breach of the said act in that:

(i) they have, or are purporting to carry out their business and the impugned services as though the respondent is providing the services of an advocate and solicitor of the High Court of Malaya in breach of s. 36 of the LPA; and

(ii) they have, or are purporting to carry out and to advertise the impugned services as services, functions and/or duties that are normally and customarily carried out or undertaken by an advocate and solicitor of the High Court of Malaya in breach of s. 36 of the LPA.

[12] The appellant, having taken the view that the respondent's acts contravened the LPA, sought and obtained from the High Court an interlocutory and *quia timet* injunction against the respondent on the ground that it has a duty to protect public interest.

Proceedings In The High Court

[13] In arguing against the grant of an injunction, the respondent raised the issue of the lack of substantive *locus standi* on the part of the appellant to bring this suit. Apart from that, the respondent also raised the issue of whether the

usual tests as propounded in *American Cyanamid Co v. Ethicon Ltd* [1975] AC 396, [1975] 1 AER 504, and developed further in *Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & Ors* [1995] 1 CLJ 293 ("*Keet Gerald* tests"), had been met.

[14] The respondent submitted that the appellant lacked the necessary substantive *locus standi* in view of the fact that the act sought to be restrained by the injunction constitutes a criminal act which only the Attorney-General, under art. 145 of the Federal Constitution, has the power to deal with by way of prosecution. The respondent also submitted that the actions of the appellant was tantamount to enforcing a penal sanction under the LPA which right under the Federal Constitution is reserved to the Attorney-General.

[15] The respondent also raised the issue of the appellant acting *ultra vires* the objects and powers granted to it under the LPA. The respondent submitted that since the appellant is a body corporate established under s. 41 of the LPA, hence they must act and conduct their activities within the four corners of the statute.

[16] The learned High Court Judge allowed the appellant's application for an injunction. In adopting the approach as set out in *Keet Gerald Francis*, the learned High Court Judge was of the considered view that the totality of the facts presented discloses a *bona fide* serious issue to be tried. The learned High Court Judge found that the appellant had substantive *locus standi* as the LPA had provided for the appellant, in s. 42, extensive objects and powers to commence the action and apply for the injunction. The learned High Court Judge held *inter alia* as follows:

(a) the objects of the appellant can be seen in s. 42 of the LPA. There are a total of 14 main objects and powers under s. 42(1) and an additional five powers under s. 42(2). Paragraph (g) was especially relevant as the appellant took the view that the activities of the respondent would be against the provisions of s. 37 of the LPA. If so, then by virtue of para. (g), the appellant was clothed with *locus standi* to bring about this action for the benefit and protection of an unsuspecting public. (Ref *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other Appeals* [1997] 4 CLJ 253; [1997] 3 MLJ 23);

(b) while it is true that contravention of s. 37 of the LPA brings about criminal sanctions, the appellant was not usurping the powers of the Attorney-General in filing this action. This was not a criminal prosecution which would totally be within the purview of the Public Prosecutor. Instead, the actions of the appellant were founded on a belief that the respondent was in breach of the provisions of the LPA and that such action by the appellant was necessary to protect and assist the public in relation to the impugned services that was or would be offered to an unsuspecting public. Such impugned services being legal services would clearly fall within the phrase "matters touching ancillary or incidental to the law";

(c) one of the issues to be tried was whether the nature of the services being offered by the respondent would contravene s. 37(3) of the LPA. Whether the packages offered by the respondent would fall within the proviso of s. 37(3) would be determined at trial and this amounted to a *bona fide* serious question to be tried. Hence, there were serious questions of law and fact in dispute between the parties; and

(d) the balance of convenience tilted in favour of the appellant. Greater harm would result if the implementation of the respondent's prepaid services scheme was allowed to proceed as this would involve untold number of unsuspecting and gullible public.

Proceedings In The Court Of Appeal

[17] Aggrieved with the High Court decision the respondent appealed to the Court of Appeal. The main issue to be determined was whether the appellant had the substantive *locus standi* to commence the action against the respondent pursuant to ss. 41(2) and 42(2) of the LPA. The Court of Appeal in allowing the respondent's appeal held the view that the powers of the appellant in ss. 41(2) and 42(2) of the LPA must be read together with the powers in s. 57 of the LPA. In doing so, it was apparent that the powers of the appellant to institute legal proceedings (through the Bar Council) were limited to matters concerning the affairs of the Malaysian Bar. As any infringement of s. 37 of the LPA was penal in nature, such infringement was within the sole purview of the Attorney-General as the Public Prosecutor. It was not part of the affairs of the appellant. Therefore, in the instant case, the appellant did not have the substantive *locus standi* to apply for the injunction which was the subject matter of this appeal.

Our Findings

[18] The appeal before us turns on to the question of whether the appellant has the *locus standi* to commence the action against the respondent pursuant to ss. 41(2) and 42(2) of the LPA for any infringement of s. 37 of the LPA.

[19] Sections 41 and 42 of the LPA which are the relevant provisions for purposes of this appeal are couched in the following terms:

> Establishment of Malaysian Bar
>
> 41. (1) There is established a body corporate to be called the "Malaysian Bar".
>
> (2) The Malaysian Bar shall be a body corporate with perpetual succession and a common seal, and with power subject to this Act to sue and be sued in its corporate name and to acquire and dispose of property both movable and immovable and to do and perform such other acts as bodies corporate may by law perform.

Object and powers of the Bar

42. (1) The purpose of the Malaysian Bar shall be:

(a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;

(b) to maintain and improve the standards of conduct and learning of the legal profession in Malaysia;

(c) to facilitate the acquisition of legal knowledge by members of the legal profession and others;

(d) where requested so to do, to express its view on matters affecting legislation and the administration and practice of the law in Malaysia;

(e) to represent, protect and assist members or of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;

(f) to establish libraries and to acquire or rent premises to house the libraries and offices of the Malaysian Bar or amenities for the use of members either alone or in conjunction with any other body or society;

(g) to protect and assist the public in all matters touching ancillary or incidental to the law;

(h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors;

(i) to award prizes and scholarships and to establish and subsidise lecturership in educational institutions in subjects of study relating to law;

(j) to grant pecuniary or other assistance to any association, institute, board or society in Malaysia in the interest of the legal profession or of the law students;

(k) to afford pecuniary and other assistance to members or former members of the Malaysian Bar and to the wives, widows, children and other dependants, whether of members, former members or deceased members who are in need of any such assistance;

(l) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice in Malaysia;

(m) to encourage, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member thereof; and

(n) to establish a Compensation Fund.

A (2) In addition to any other powers given by this Act, the Malaysian Bar may

(a) purchase or lease any land or building required for any of the purpose of the Malaysian Bar;

B (b) sell, surrender, grant, lease, exchange or alter any land or building as may be found most convenient or advantageous;

(c) borrow money whether by way of bank overdraft or otherwise for such of the purposes of the Malaysian Bar as the Malaysian Bar may from time to time consider desirable;

C (d) make rules governing the manner of convening general meetings of the Malaysian Bar and the procedure thereat which rules shall be approved and may be amended by ordinary resolution at a general meeting of the Malaysian Bar; and

D (e) do all such other things as are incidental or conducive to the achievement or betterment of the purposes of the Malaysian Bar.

(3) In addition to any other rules that it may make under this Act the Malaysian Bar may make rules for giving effect to this Part.

E **[20]** Section 57 of the LPA sets out the specific powers of the Bar Council. Of special relevance to the issue of substantive *locus standi* before us is para. 57(j), which reads as follows:

(j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar and to F compound and allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Malaysian Bar.

[21] The thrust of the appellant's arguments both in the courts below and before us is encapsulated in the following submissions by learned counsel for G the appellant:

(a) as a matter of statutory construction of ss. 41 and 42 of the LPA, s. 42(2)(e) of the LPA 1976 confers upon the appellant the power to do all such things "incidental or conducive" to the achievement or betterment of its statutory purposes, as set out in s. 42(1)(a) to (n) of the LPA; H

(b) as a matter of statutory construction, as the powers conferred on the appellant by s. 42(2) of the LPA are specifically stated to be "in addition to any other powers given by this Act", these powers are in addition to (and not restricted, curtailed or subject) to the specific powers conferred I by s. 57 of the LPA . As such, the learned judges of the Court of Appeal erred in law in disagreeing with the learned High Court Judge, and

construing s. 57 of the LPA as restricting the appellant's powers under the LPA to institute legal proceedings only to matters "concerning the affairs of the Malaysian Bar";

(c) the appellant is conferred with powers to do all such things "incidental or conducive" to protect and assist the public in all matters touching ancillary or incidental to the law (as provided by s. 42(1)(g) of the LPA, which includes instituting legal proceedings for breaches of the LPA (in particular ss. 36 and 37 of the LPA);

(d) for purposes of achievement or betterment of its objects under the LPA (in particular s. 42(1)(g)), the powers conferred on the appellant to institute legal proceedings for breaches of the LPA are co-extensive (and not mutually exclusive) with the power to institute criminal prosecution(s) conferred on the Attorney-General under art. 145 of the Federal Constitution. In this regard, the appellant as the governing body for the legal profession in West Malaysia has the requisite *locus standi* and is empowered to bring civil action to seek redress, including injunctive relief against parties who act in contravention of the LPA.

[22] The submissions of learned counsel for the respondent in gist were as follows:

(a) the appellant is not entitled to seek an injunction in civil proceedings for the purposes of restraining a perceived breach of s. 36 of the LPA which breach results in the commission of a criminal offence under s. 37 thereof, as the appellant lacks substantive *locus standi* to seek a restraint from the perceived commission of such a criminal offence. In Malaysia, the jurisdiction to deal with infringements of statutory provisions which have penal consequences lie solely and squarely with the Attorney-General as the Public Prosecutor. (see *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other Appeals* [1997] 4 CLJ 253; [1997] 3 MLJ 23).

(b) the appellant is a body corporate established under s. 41 of the LPA and had acted *ultra vires* in filing the action in question in the High Court, seeking, *inter alia*, declaratory and injunctive relief designed to restrain the commission of a criminal offence under s. 37 of the LPA. The LPA does not expressly authorise the appellant to enforce the criminal sanctions arising under the LPA. This must remain within the prerogative of the Attorney-General pursuant to art. 145 of the Federal Constitution. The relief sought by the appellant is hinged upon an alleged breach of s. 36 of the LPA, which creates a criminal offence under s. 37. Section 37 gives rise to a penal sanction. (See cases of *Fadzil Mohamed Noor v. Universiti Teknologi Malaysia* [1981] 1 LNS 214; [1981] 2 MLJ 196; *Public Textiles Bhd v. Lembaga Letrik Negara* [1976] 1 LNS 120; [1976] 2 MLJ 58; *Majlis Peguam Malaysia & Ors v. Raja Sekaran Krishnan & Other*

A *Appeals* [2004] 4 CLJ 239; *Malaysian Shipyard & Engineering Sdn Bhd v. Bank Kerjasama Rakyat (M) Bhd* [1985] 2 CLJ 427; [1985] CLJ (Rep) 206; *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12; *Gouriet v. Union of Post Office Workers & Ors* (1977) 3 All ER 70).

B **[23]** We have no issues with the finding of the Court of Appeal in that the specific power in sub-s. 41(2) of the LPA for the appellant to sue and be sued in its corporate name comes with the qualification that it is "subject to this Act". It is given that s. 41(2) of the LPA confers the appellant with powers subject to this Act to sue and be sued in its corporate name. This section C clearly restricts the power only to be subject to this Act and not to any other written law. Hence, it goes without saying that the LPA confers the appellant with the power to sue only which the LPA can restrict such power. However, we find that the Court of Appeal had misconstrued the ambit of the powers of the appellant when it held that the powers in paras. (a) to (d) of sub-s. 42(2) D do not enable the appellant to institute this action to restrain the respondent from providing the impugned service.

[24] In our judgment we find, with respect, that the Court of Appeal had erred when it held that the powers of the appellant in sub-ss. 41(2) and 42(2) of the LPA must be read together with the powers of the Bar Council in E s. 57. And that the powers of the appellant to institute legal proceedings (through the Bar Council) are limited to matters "concerning the affairs of the Malaysian Bar". It is clearly evident from the reasoning of the Court of Appeal as enumerated above, that there are two primary underlying basis or lines of thought that influenced the court to decide as it did. Firstly, that F sub-ss. 41(2) and 42(2) of the LPA read together with the s. 57 would only enable the appellant to institute legal proceedings (through the Bar Council) to matters "concerning the affairs of the Malaysian Bar". Secondly, s. 37 of the LPA does not concern or form part of the affairs of the Malaysian Bar. And since s. 37 is penal in nature, such infringement is within the sole G purview of the Attorney-General as Public Prosecutor and not the appellant as a body corporate.

[25] In our assessment, with respect, we find that there was inherent in the reasoning of the Court of Appeal a misinterpretation of the statutory powers of the appellant pursuant to s. 41(2) of the LPA. We find that the Court of H Appeal subscribed itself to a narrow interpretation of ss. 41(2) and 42(2) of the LPA when it held that the powers of the appellant to institute legal proceedings (through the Bar Council) were limited to matters concerning the affairs of the Malaysian Bar.

[26] Based on the myriad of functions of the Malaysian Bar as envisaged I under ss. 41 and 42 of the LPA, we find that the Court of Appeal erred when it held the view that the appellant did not have the substantive *locus standi* to apply for the injunction which was the subject matter of this appeal. As

we have alluded to above, the appellant is conferred by the LPA with powers to sue and "to protect and assist the public in all matters touching ancillary or incidental to the law" as provided under s. 42(1)(g) of the LPA.

[27] In our judgment we find that the learned High Court Judge was right in her finding that the appellant had substantive *locus standi* as the LPA has provided for the appellant, in s. 42, extensive objects and powers to commence the action and apply for the injunction.

[28] We agree with the learned High Court Judge that the underlying purpose in s. 42(1)(g) of the LPA was of particular relevance and would clothe the appellant with *locus standi* to bring this action for "the benefit and protection of an unsuspecting public". We therefore agree with learned counsel for the appellant that the Court of Appeal erred in law when it held that the appellant lacks the *locus standi* by relying on s. 57 of the LPA. It is pertinent to note that s. 57 of the LPA sets out the specific powers of the Bar Council. As a matter of statutory construction, as the powers conferred on the appellant by s. 42(2) of the LPA are specifically stated to be "in addition to any other powers given by this Act", these powers are in addition to (and not restricted, curtailed or subject) the specific powers conferred by s. 57 of the LPA .

[29] Thus, in our considered view, when an unauthorised person purports to act or to do all things customarily done by an advocate and solicitor, which would be in violation of s. 37 of the LPA, the appellant is clothed with powers under s. 42(2) of the LPA to sue.

[30] As alluded earlier, another reason the Court of Appeal found that the appellant lacked the requisite *locus standi* to bring this action is because any infringement of s. 37 of the LPA was penal in nature and such infringement was within the sole purview of the Attorney-General as the Public Prosecutor. The Court of Appeal found that it was not part of the affairs of the appellant. We agree that s. 37 of the LPA is penal in nature. There is no dispute that s. 37 of the LPA provides that breaches of the same is an offence punishable by a fine or terms of imprisonment. Section 37 of the LPA provides as follows:

> No unauthorised person to act as advocate and solicitor
>
> 37. (1) Any unauthorised person who-
>
> (a) acts as an advocate and solicitor or an agent for any party to proceedings or in any capacity, other than as a party to an action in which he is himself a party, sues out any writ, summons or process, or commences, carries on, solicits or defends any action, suit or other proceedings in the name of any other person in any of the Courts in Malaysia or draws or prepares any instrument relating to any proceedings in any such Courts; or

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(b) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorised to act as an advocate and solicitor, or that he is recognized by law as so qualified or authorised,

shall be guilty of an offence and shall on conviction be liable to a B fine not exceeding two thousand five hundred ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Without prejudice to the generality of subsection (1), any unauthorised person who either directly or indirectly-

C (a) draws or prepares any document or instrument relating to any immovable property or to any legal proceedings or to any trust; or

(b) takes instructions for or draws or prepares any document on which to found or oppose a grant of probate or letters of administration; or

D (c) draws or prepares any document or instrument relating to the incorporation or formation of a limited company; or

(d) on behalf of a claimant or person alleging himself to have a claim to a legal right writes, publishes or sends a letter or notice threatening legal proceedings other than a letter or E notice that the matter will be handed to an advocate and solicitor for legal proceedings; or

(e) solicits the right to negotiate, or negotiate in any way for the settlement of, or settles, any claim arising out of personal injury or death and founded upon a legal right or otherwise, F shall, unless be proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence under this subsection.

(3) Any unauthorised person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor shall be guilty of an offence under this subsection: G Provided that this subsection shall not apply to any person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor pursuant to a lawful contract of indemnity or insurance.

(4) Every person who is convicted of an offence under subsection H (2) or (3) shall, on conviction, be liable for the first to a fine not exceeding five hundred ringgit or in default of payment to imprisonment for a term not exceeding three months and for the second or subsequent offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

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(5) Any act done by a body corporate which if done by a person would be an offence under subsection (1), (2) or (3) or is of the nature or in the manner as to be calculated to imply that the

body corporate is qualified, or recognised by law as qualified, to act as an advocate and solicitor shall be an offence under this section and the body corporate shall, on conviction, be liable for the first offence to a fine not exceeding one thousand ringgit and for the second or subsequent offence to a fine not exceeding three thousand ringgit and where the act is done by a director, officer or servant thereof the director, officer or servant shall, without prejudice to the liability of the body corporate, be liable to the punishment provided in subsection (4).

(6) Where any firm does an act which if done by a person would be an offence under subsection (1), (2) or (3) every member of the firm shall be deemed to have committed the offence unless he proves that he was unaware of its commission.

(7) Any person who does any act in relating to a contemplated or instituted proceeding in the High Court which act is an offence under this section shall also be guilty of a contempt of the Court in which the proceeding is contemplated or instituted and may be punished accordingly irrespective of whether he is prosecuted for the offence or not.

Notwithstanding the penal nature of s. 37, we find that the Court of Appeal had erred in concluding that the infringement under s. 37 of the LPA was within the sole purview of the Attorney-General as the Public Prosecutor and was not part of the affairs of the appellant. We agree with the contention of learned counsel for the appellant that the appellant's power to "sue" for a violation of s. 37 of the LPA is neither a "usurpation" nor is it inconsistent with the Attorney-General's powers under art. 145(3) of the Federal Constitution. It is our view that the powers of the Bar in particular under ss. 42(1)(e), (g) and 42(2)(e) of the LPA must be read to be co-extensive with the powers of the Attorney-General under art. 145(3) of the Federal Constitution.

[31] In our judgement ss. 42(1)(e), (g) and 42(2)(e) of the LPA must be construed in line with its intended purpose. For this, a purposive interpretation must be accorded to it. This is clearly in line with s. 17A of the Interpretation Acts 1948 and 1967 where it provides that:

> in the interpretation of a provision of an Act, a construction that would promote the purpose of the object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[32] In construing a statute in line with the purposive approach, the relevant statute should be considered in the context and scheme of the relevant Act as a whole, and its purpose indeed should be regarded (see *Luke v. IRC* [1963] AC 557 and *WT Ramsay Ltd v. Inland Revenue Commission* [1982] AC 300).

[33] The spirit of s. 17A of the Interpretation Acts 1948 and 1967 was succinctly explained in the decision of this Court in *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97. Gopal Sri Ram JCA (as he then was) had this to say:

> When construing a taxing or other statute, the sole function of the court is to discover the true intention of Parliament. In that process, the court is under a duty to adopt an approach that produces neither injustice nor absurdity: in other words, an approach that promotes the purpose or object underlying the particular statute *albeit* that such purpose or object is not expressly set out therein.

[34] In the very recent decision of this court in *Lembaga Minyak Sawit Malaysia v. Arunamari Plantations Sdn Bhd & Ors And Another Appeal* [2015] 7 CLJ 149; [2015] 5 MLRA 1 this court reiterated the principles postulated in the earlier decision of *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* (*supra*) and held that in construing the expressly listed purposes under an Act, the courts are not confined to undertaking a literal interpretation of the words therein but were permitted to construe the listed purposes in the context and scheme of the relevant Act as a whole.

[35] Now, reverting back to the LPA in particular to ss. 42(1)(e), (g) and 42(2)(e) we found that the appellant is endowed with wide scope of powers for the purpose to regulate the betterment of the legal profession. This can be seen in the wording employed in s. 42(1)(e) which reads "to represent, protect and assist members or of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia". Section 42(1)(g) provides the powers of the appellant "to protect and assist the public in all matters touching ancillary or incidental to the law". This is further fortified in s. 42(2)(e) which provides for the appellant's powers "do all such other things as are incidental or conducive to the achievement or betterment of the purposes of the Malaysian Bar".

[36] Thus, to say that the exercise of the powers of the appellant to sue for a violation of s. 37 of the LPA is an usurpation of the Attorney-General's powers is akin to ignoring the background of the objective, policy and functions of the appellant and the situation warranting the appellant to sue for such a breach. Such a notion would create an absurd situation and would defeat the appellant's statutory purpose of protecting the public including the members of the Bar from violations of the LPA. This was not a criminal prosecution which would totally be within the purview of the Public Prosecutor. Instead, the actions of the appellant were founded on a belief that the respondent was in breach of the provisions of the LPA and that such action by the appellant was necessary to protect and assist the public in relation to the impugned services that was or would be offered to an unsuspecting public.

[37] For the aforesaid reasons, we are unanimous in our view that the objectives, role and functions of the appellant to regulate the legal profession must not be viewed in the narrow sense but viewed in the context of the interest and welfare of the public. In the circumstances, we find that the appellant has the requisite *locus standi* to sue the respondent for the alleged breach under s. 37 of the LPA.

Conclusion

[38] In the final analysis, we are unanimous that the Court of Appeal in giving ss. 37, 41, 42, and 57 of the LPA a narrow and restricted interpretation had failed to appreciate the extent of the objective and purpose of the LPA and the role and function of the appellant in the context of the wider interest of the legal profession and the public at large. A purposive interpretation that promotes the purpose behind the enactment of the aforesaid provisions must be accorded or otherwise that would create an absurd situation that would defeat the appellant's statutory purpose to protect the public including the members of the Bar from violations of the LPA.

[39] By reason thereof, we are unanimous that the appellant, as the governing body for the legal profession in West Malaysia, is empowered to bring civil action to seek legal redress, including injunctive relief against parties who act in contravention of the LPA.

[40] For the reasons adumbrated above, we answered all the questions posed in this appeal in the affirmative. Accordingly, the appeal was allowed and the case was remitted to the High Court for trial.